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No. 357] NEW DELHI, MONDAY, NOVEMBER 12, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th November 1955

S.R.O. 3653.—Whereas the Election of Shri Suresh Chandra Mishra as a member of the House of the People from the Monghyr North East Parliamentary Constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Rajendra Prasad Yadav of Village Raghunathpur, P.O. Saheb Kamal, P.S. Ballia, District Monghyr;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order to the Commission;

Now therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 190 OF 1952

ELECTION CASE No. 5 OF 1952

Shri Rajendra Prasad Yadav, Village Raghunathpur, P.O. Saheb Kamal, P.S. Ballia, District Monghyr—*Petitioner.*

Versus

Shri Suresh Chandra Mishra, Village and P.O. Gogri, P.S. Gogri, District Monghyr.—*Respondent.*

For the Petitioner.—Shri Udal Narayan, Advocate, Shri Satyanarain Prasad, pleader.

For the Respondent.—Shri Baldeo Narayan, pleader.

PRESENT

Shri Ramjivan Sinha, Chairman.

Shri Umakanta Prasad Sinha, Retired Dist. & Sessions Judge,

Shri Rajeshwari Prasad, Advocate—Members Election Tribunal.

JUDGMENT

It is common ground that the petitioner and the respondent stood as candidates from the Monghyr North-East Parliamentary constituency at the time of the last General Election to the House of the People which was held from the 4th of January, 1952 to the 22nd of January, 1952, the first having been nominated by the Congress party and the second having been set up by the Socialist party. It is also the admitted case of both parties that on counting of votes which took place on the 2nd and 3rd of February, 1952, it was found that the petitioner had secured 72,721 votes and the respondent 73,967 votes and accordingly the respondent was declared elected by a majority of 1,246 votes and this fact was duly published in the *Gazette of India*, dated 14th February 1952.

2. The petitioner contends that due to the corrupt and illegal practices committed by the respondent himself and through his agents extensively throughout the constituency which affected materially the result of the election and also due to the non-compliance of several mandatory provisions of the law, the election of the respondent is invalid and liable to be set aside. The petitioner prays for a declaration that the election of the respondent is void and that he (the petitioner) be declared duly elected or, in the alternative that the whole election be declared void.

3. Amongst the corrupt and illegal practices it is alleged

- (i) that instead of the notified Polling booth at Dumri U.P. School, the polling took place at Pansalwa U.P. School due to which the voters of the petitioner were misled;
- (ii) that due to the late arrival of the voters' list at 3-30 P.M. on 21st January 1952 at Chandpur Dahgauna booth a large number of voters of village Chak Yusuf had to return without casting their votes;
- (iii) that on 8th January 1952 at Pachaut the Socialist workers with the connivance of the respondent and his agent began to create trouble and mischief, so much so that one Shri Brajraj Bahadur Singh actually instigated the voters and Socialist workers against the police and asked the voters to follow him out of the enclosure, and due to such interference and mischief the polling had to be stopped for a while and this also resulted in overawing the voters who out of fear could not freely exercise their right of franchise;
- (iv) that on 16th January 1952 at Sonbarsa U.P. School booth Jageshwar Singh, Suresh Prasad Singh and Anandi Singh Socialist workers of village Kaithu were found behaving in disorderly manner in order to scare away the voters for which they were turned out from the Polling station;
- (v) that on 18th January 1952 at Usari L.R.D. Estate the voters who were going to cast their votes were threatened by the Socialist workers, and on protest being made by the Congress workers they were beaten as a result of which a large number of voters had to go back, out of fear, without casting their votes;
- (vi) that about 221 voters of Sitanabad who cast their votes on 11th January 1952 at polling booth No. 208 again, at the instance of the respondent, voted at Sitanabad polling booth No. 159 on 16th January 1952;
- (vii) that about 622 voters of Tola Bhorha of village Simri who had to cast their votes at Simri on the 17th and 18th January, 1952, being misled by the Socialists and with the connivance of the respondent, were made to vote at Turki on 11th January 1952;
- (viii) that on 21st January 1952 at Gaurimian Jagir Polling station No. 199 the respondent and his agents with his connivance, caused about 81 female voters to cast votes in his favour, although in the Electoral Roll they were merely decried by the names of their husbands and not by their own names and that similar practice prevailed at Khamauth polling station Nos. 167 and 168 where about 200 female voters similarly described were allowed to vote on 18th January 52;
- (ix) that one Sibakanta Misra, who is the own brother of the respondent and who was on closest terms with Mr. N. C. Ganguly who acted as the Presiding officer at several booths of Gogri-Chautham P.S., used to sit as an election agent of the respondent although he was not and that Mr. Ganguly in collusion with Shibakanta Misra did

not allow Shri Nageshwar Prasad Yadav, polling agent of the petitioner, to enter the polling booths wherever he was incharge of the polling and

- (x) that the ballot boxes of the petitioner were despatched unsigned and unsealed, by Mr. Ganguly wherever he was the Presiding officer.

4. It is further alleged that the ballot boxes were tampered with generally in the whole of the constituency, some examples of which are given as follows:—

- (a) That at Polling station No. 255 at Dumri 25 ballot papers were found in the petitioner's ballot box, while 254 ballot papers were found in the ballot box of the respondent, while the total votes polled were 400;
- (b) That at Polling station No. 250 at Sonbarsa the total ballot papers found in the boxes of the two candidates were 754 while the ballot papers actually issued numbered about 500 only;
- (c) That about 300 ballot papers of Parliamentary constituency were found in the ballot box of Choudhary Mazrul Hasan, a candidate for the State Assembly seat.

It is also alleged that on 7th January 1952 at Monghyr Raja Kachahari Panchkhuti Jorabarpur, about 70 female voters were not allowed to exercise their right of franchise on the ground that the voters' list was not with the Presiding officer.

5. The petitioner has also challenged the method of counting as very defective, inasmuch as about half a dozen boxes were opened at a time with the result that it was very difficult for him and his agent to watch the counting. He has also alleged that the respondent's election agent has not filed the return of election expenses and that the respondent, in his return of election expenses, has shown many items of unauthorised expenses. The petitioner further contends that the respondent did not deposit the security money as required under law for standing as a candidate for the House of People. It is also generally stated that the election is bad by reason of the non-compliance of the various provisions of the Act and the Constitution which has materially affected the result of the election.

6. Amongst the corrupt and illegal practices there was also an allegation that the Socialist candidate and his supporters were freely using Jeep cars in taking the voters to the polling booths at Sonbarsa, Gogri and Parbatta and other polling booths and through one witness some evidence was led by the petitioner on this point, but as subsequently the amendment regarding the specifications of the aforesaid booths as allowed by this Tribunal was set aside by the Hon'ble High Court, the point was not pressed and no further evidence was adduced. The petitioner in para. 1 and para. 2, clause (b), clause (c) and clause (i) of the grounds of the election petition made certain other allegations which have not been pressed.

7. The respondent in his written-statement categorically denies all the allegations of corrupt and illegal practices as also of the non-compliance of the provisions of law, as alleged in the election petition. It is denied that the respondent or his agents or his supporters did any act to scare away the voters or used coercion or intimidation at any booth to prevent the voters from freely exercising their right of franchise. It is denied that Brajraj Bahadur had anything to do at Pachauth on behalf of the respondent or that he did anything of the kind as alleged. It is also denied that Jageshwar Singh, Suresh Prasad Singh and Anandi Singh were Socialist workers. It is contended that the election was absolutely fair and free throughout the constituency.

8. It is further stated that Pansalwa is only a tola of mouza Dumri, that there is only one U.P. School in that mouza and that no voters were misled as alleged. Regarding the voters of Chak Yusuf also it is stated that they did exercise their right of franchise on 22nd January 1952. The allegation of double voting is also denied. In this connection it is pointed out that no such objection was taken either at the time of voting or at the time of counting. It is also denied that the respondent's brother Shibakanta Misra was on closest terms with Mr. Ganguly or that he used to sit near him as an election agent of the respondent. The allegation that Mr. Ganguly in collusion with Shibakanta Misra, did not allow Nageshwar Yadav to work as polling agent of the petitioner wherever he was in charge of the polling is also denied. On the other hand, it is contended that respondent's brother and Mr. Ganguly did not pull on well during the days of

polling. The petitioner's allegation that his ballot boxes were despatched unsigned and unsealed by Mr. Ganguly wherever he was Presiding officer is also denied. The petitioner's allegation regarding the tampering with the ballot boxes is also denied. The respondent emphatically asserts that he or his agent did not commit any corrupt or illegal practice in the constituency, but that on the contrary, he took all reasonable means for preventing the commission of such practices at the election.

9. The allegation regarding the showing of unauthorised expenses in the election expenses return is also denied. It is contended that the respondent was himself his election agent and that as such no question arises regarding the filing of election expenses return by his election agent. Regarding the deposit of security money also it is stated that the respondent deposited the money as required under the law. It is also denied that there was any defect in the method of counting which was held under the direct and strict supervision of the Returning Officer in presence of the candidates and their agents according to rules. It is also denied that there was any non-compliance of the provisions of the Act or of the Constitution as alleged, nor was the result of the election, in any way, affected on the ground of any such non-compliance. The respondent has also taken objections regarding the maintainability of the election petition and has also contended that the election petition is bad for non-joinder of parties and also barred by limitation. On these averments, the respondent contends that the election petition is fit to be dismissed with costs.

10. The issues framed are:—

1. Is the election petition barred by limitation?
2. Is the petition incompetent for non-compliance of the provisions of section 83 of the Act?
3. Is the petition bad for non-joinder of parties?
4. Did the respondent or his agents or his supporters with the connivance of the respondent or his agents commit corrupt practices specified in the election petition? If so, is the election of the respondent void?
5. Has the result of the election been materially affected by non-compliance with any provision of law as alleged?
6. Were the ballot boxes at different polling stations of the Constituency tampered with? If so, is the election void for that reason?
7. Was the method of counting of the ballot papers of different ballot boxes illegal? If so, has the result of the election been materially affected thereby?
8. Did Mr. Ganguly, one of the Presiding officers, act in an improper or illegal manner in the conduct of the election and has the result of the election been materially affected thereby?
9. Did the respondent take all reasonable means for preventing the commission of corrupt and illegal practices at the election?

10. To what relief or reliefs is the petitioner entitled?

Issue added on 10th January 1955 as per order No. 30 dated 10th January 1955.

11. Was the security money deposited by the respondent invalid, as being not made in accordance with law?

FINDINGS

Issues Nos. 1 to 3.—These preliminary issues were decided by the Election Tribunal by order dated 24th December 1952. Against this order the respondent moved the Hon'ble High Court for leave to appeal to the Supreme Court. The leave was refused by order dated 22nd September 1953. The respondent moved the Supreme Court which by its order dated 7th December 1953 granted leave to appeal and the appeal was finally dismissed by the Supreme Court by order dated 21st September 1954. The result is that these three issues stand decided in favour of the petitioner.

12. *Issues Nos. 5, 6 and 7.*—For the sake of convenience these issues are taken up first and are dealt with together. Several illegalities have been alleged due to which the result of the election is said to have been materially affected. One such allegation as mentioned in para. 2(a) of the election petition is that although the originally notified polling booth was at Dumri U.P. School, the polling did not take place there, but that it was held at Pansalwa U.P. School

which is about more than two miles from Dumri U.P. School and that this was done simply to mislead the voters of the petitioner. It is admitted that the originally notified booth was at Dumri U.P. School, but the polling was actually held at Pansalwa, which is a tola of mouza Dumri, in a building of an M.E. School in which previously there was only a U.P. School. It is also admitted that at the time of the polling there was no U.P. School at Dumri or at Pansalwa, except that the U.P. classes were also held in the M. E. School. It is also in evidence that there was only a L.P. School at Dumri and also another L.P. School at Pansalwa at a short distance from the M. E. School. In the list of polling stations (Ext. 16) for the House of People, the booth is simply described as Dumri U. P. School. In the corresponding list (Ext. F) for the Assembly, the booth is described as Dumri U.P. School (tola of Pansalwa). The description of the booth as given in the list of polling stations was, no doubt, somewhat confusing but the mention of "tola of Pansalwa" within brackets against Dumri U. P. School in Ext. F was a sufficient indication of the fact that the polling was intended to be held at tola Pansalwa. Apart from this, it is definitely established that the polling which was actually held at Pansalwa was so held after due proclamation and, in fact, there was no misleading of the voters.

13. The polling at Pansalwa was held on 10-1-52 and 11-1-52. P.W. 7 Dhaneshwar Prasad Singh has stated that 2 to 3 days before the commencement of the poll he learnt that the polling was to be held at Pansalwa. He further admits that the fencing of the polling station was constructed three days before the commencement of the polling. From the evidence of P.W. 6, who was teacher of the M. E. School, it appears that the military had arrived at Pansalwa for purpose of the election on 8-1-52. It is also in evidence that the M. E. School was closed for the 10th and the 11th for purposes of the polling by order dated 9-1-52 (Ext. 3). All these facts would have undoubtedly given sufficient publicity about the holding of the polling at Pansalwa. It has also been elicited from R.W. 19 in cross-examination that the fact that the polling was to be held at Pansalwa was announced by beat of drum on behalf of the Government. On the other hand, there is no reliable evidence to prove that any such proclamation was ever made that the polling would be held at Dumri, or that any attempt was made to put up any construction for purposes of the polling at any time at Dumri proper.

14. From the list (Ext. 16) it appears that the people of mouza Dumri were to cast their votes on the first day of the polling, that is 10th January 1952. The diary (Ext. 5/b) of Mr. J. Sahay of this date shows that out of the total voting strength of 1376, 787 ballot papers were issued to the voters amongst whom there were about 300 lady voters. The attendance of such a large number of lady voters at the booth is eloquent enough to show that there was wide publicity about the holding of the polling at Pansalwa. According to P.W. 7 and P.W. 9, about 100 to 125 persons of Dumri could not cast their votes as they arrived at Pansalwa after the polling was over. According to P.W. 22, about 50 to 60 voters of Dumri arrived late and so they could not cast their votes. He has further stated that on the second day of the polling also 2 or 3 groups of voters returned from Pansalwa without casting their votes. This is simply absurd as the voters of Dumri had to cast their votes on the first day of the polling.

15. In the election petition, it is not specifically mentioned that any voter of Dumri, in fact returned without casting his vote. The story that a large number of voters of Dumri returned without casting their votes is an afterthought. No complaint to this effect was made to the Presiding officer, as it appears from the diaries (Exts. 5/b and 5 c). It is also important to note that none of the voters of Dumri who are said to have returned from Pansalwa without casting their votes, has been examined. We, therefore, find that the polling was really intended to be held at Pansalwa and there was, in fact, no change in the site of the booth and that the polling which was held in the M. E. School at Pansalwa was so held after due proclamation and, as a matter of fact, the voters of mouza Dumri proper were not misled and none of them returned from Pansalwa without casting votes.

16. The next allegation as mentioned in para. 2(e) of the election petition is that as the voters' list of village Chak Yusuf arrived at 3-35 p.m. at Chandpur Dahgana, over 307 voters returned without exercising their rights of franchise on 22nd January 1952. From Exts. F and 16 it is evident that the polling at Chandpur Dahgana was to be held on 21st January 1952 and 22nd January 1952 and that the voters of Chak Yusuf had to cast their votes on the second day of the polling. In this case it is admitted that there was delay in the arrival of the list of voters of mouza Chak Yusuf of circle No. 7 which reached the booth at 3-35 p.m. The question for consideration is whether due to the late arrival of the

voters' list, any voter of Chak Yusuf of circle No. 7, in fact, returned from the booth without casting his vote.

17. The witnesses examined on this point on behalf of the petitioner are P.Ws. 4, 5, 23 and 26. P.W. 4 has, of course, stated that he and about 40 to 50 other voters of his basti returned from the booth at about 3 p.m. without casting votes as the voters' list of their basti had not reached there till then. He is a man of village Gogri-Jamalpur. His evidence does not at all go to show that any voter of Chak Yusuf returned without casting his vote. P.W. 5 Nageshwar Prasad Yadav has stated that about 60 to 70 voters of Chak Yusuf returned without casting votes. He claims to have been appointed as polling agent of the petitioner at Chandpur Dahgana booth,—an allegation which we have found to be not proved. His own statements that he reached the booth at about 8 a.m. and that the polling was to start at 10 or 10-30 a.m. are hardly consistent with his contention of having gone to the booth with an authority letter from the petitioner for acting as a polling agent. He has further stated that the voters' list of Chak Yusuf was brought by the S.D.O. of Khagaria. The diary of Mr. Ganguly (Ext. S/1) shows that it was Mr. Jha, the Second officer of Khagaria, who had brought the voters' list and not the S.D.O. We find that P.W. 5 was really not present at the booth and that his evidence is not at all reliable. P.W. 23 has also stated that about 30 to 40 persons returned along with him without casting their votes. He comes unsummoned as brought by a Congress leader Bhagwan Das Lahiri. He also is an unreliable witness. According to the petitioner (P.W. 26) himself, about 200 voters could not cast their votes due to the late arrival of the voters' list. From his evidence in cross-examination it appears that he was not present at the booth till the close of the polling. It is evident from the above that the evidence as adduced on behalf of the petitioner regarding the number of voters who are said to have returned without casting their votes is materially discrepant. It is important to note that none of the voters who are said to have gone back without casting votes, excepting P.W. 23, has been examined.

18. On the other hand, the respondent has examined a number of persons of Chak Yusuf who actually casted their votes. They are R.W. 2, R.W. 4, R.W. 5, R.W. 6, R.W. 8 and R.W. 9. They have all stated that none of the voters of Chak Yusuf returned without casting votes. R.W. 6 has made a clear and comprehensive statement on this point. He has stated that he along with other voters of his village came to the booth at about 10 a.m. and on arrival they were informed that the voters' list of their village had not reached till then. Some of them stayed there while others went back to the village for taking their food, but they all subsequently returned and when the voters' list arrived, they all went inside the polling enclosure and cast their votes. He remained at the booth till the close of the polling. He has denied that anybody of his village reached there complaining that he could not cast his vote. His statements find ample support from those of Mr. Ganguly in his diary (Ext. 5/1), which are as follows:

"In the morning it was noticed that the Electoral Roll bearing the names of voters of Chak Yusuf (307) of circle 7 of Gogri has not been sent. The Electoral Roll supplied contained only the list of voters of Chak Yusuf of circle 4 only. At 8-40 a.m. I sent a note to S.D.O. through S.I. Gogri with directions to send it to Khagaria on a Truck. A man had gone to Khagaria with the note on a Truck. I had asked the voters to wait in the Polling station. I also asked the candidates present and agents to wait within the Polling Station. After 1 p.m. the agents filed a petition stating that voters have left for home for food. No voter was within the Polling station then. I asked them to ask the voters to wait till 4 p.m. within the Polling station. The Electoral Roll which was missing was brought by Mr. Jha from Khagaria at 3-45 p.m. Thereafter there was rush of voters at Chak Yusuf. At 4 p.m. there were only five voters left within the Polling station, who had not got ballot papers. They dropped their papers in the boxes and sealing of boxes began at 5 minutes past four. In the last 25 minutes my men dealt with 100 voters."

We find that the voters of Chak Yusuf who came to the booth did cast their votes and that none of them went back without exercising his right of franchise.

19. From the marked copy of the electoral roll (Ext. 14/e), it appears that originally there were 317 voters of mouza Chak Yusuf in circle No. 7, out of whom the names of 150 voters were subsequently expunged and that out of the remaining 167 voters, 79 voted and 88 did not cast their votes. There is no reliable evidence to prove that any of these 88 voters came to the booth and returned without casting his vote. The learned lawyer for the petitioner invited our attention to rule 19(4) of the Representation of People Rules, 1951.

and contended that due to the late arrival of the voters' list, it should be inferred on the basis of Ext. 14/e that the result of the election was affected by 88 votes. Clause (4) of Rule 19 simply lays down that the Returning Officer shall provide at such polling station a sufficient number of ballot papers and copies of electoral rolls. The question, however, as to what was the effect of late arrival of voters' list has to be gathered from the facts and circumstances of each individual case. In the present case, in view of the facts as discussed above, we are unable to draw an inference as suggested by the learned lawyer for the petitioner. We are of the view that unless and until it be definitely proved that any voter, in fact, returned without exercising his right of franchise we would not be justified in drawing an inference that the result of the election was affected by the votes of 88 persons who did not cast their votes. We find that due to the late arrival of the voters' list of Mouza Chak Yusuf, circle No. 7, at the booth at Chandpur Dahgana, the result of the election has not been affected in any way.

20. In para. 2(j) of the election petition it is alleged that about 222 voters of Sitanabad cast their votes on 11th January 1952 at polling booth No. 208 (which was at Mouza Sonepura) and that the same voters again cast their votes, at the instance of the respondent at Sitanabad, polling booth No. 159 on 16th January, 1952. It is further stated that this practice of double polling of the Socialist prevailed generally throughout the constituency, but this allegation has not been pressed at the time of hearing. In para. 18 of the written statement it is denied that there was any double polling, as alleged by the petitioner. P.Ws. 26, 27 and 28 are the witnesses on behalf of the petitioner on this point. The evidence of the petitioner (P.W. 26) is mere hearsay as he himself admits in para. 38 of his deposition. P.W. 27 is a man of Sitanabad. He has stated that he cast his vote first at the booth at Sonepura and again at the booth at Sitanabad. He has further alleged that men of the Socialist Party had taken him as also 100 to 150 other men of the basti, to Sonepura for casting vote and that the same persons took all of them to Sitanabad for casting their votes there. He admits that a man of Rajendra Babu had brought him to Court. He has made certain absurd statements in cross-examination from which it appears that he did not cast his vote at any of the two booths, as alleged. He has stated that at Sonepura booth the nail of his left thumb was painted with ink of black colour which he subsequently scrapped with a knife and that at Sitanabad booth no part of his body was so painted. These statements are against the mandatory provisions of rule 23 and we do not accept his evidence. P.W. 28 Ramgulam Barhi is also a man of Sitanabad and he, too, has made similar statements as P.W. 27. On being questioned as to how he cast his vote, he made a fantastic statement by saying that he voted by raising his hand. The evidence of this witness is equally untrustworthy.

21. The respondent (R.W. 16) has denied that any voter who had cast his vote at Sonepura booth voted again at Sitanabad. He has denied that any double polling took place at his instance or at the instance of any of his workers, as alleged. R.Ws. 10, 11 and 12, who are residents of Sitanabad, have stated that they cast their votes at Sonepura. They have denied that they again voted at Sitanabad. In the Polling Chart (Ext. F) village Kusmi is noted against Sonepura booth No. 208. There is no mention of the name of village Sitanabad against this booth. The marked copy of the electoral roll (Ext. 14/f) also does not specifically mention the name of village Sitanabad. In view of these facts we had grave doubts if the people of Sitanabad at all voted at Sonepura, but in this case the fact that some people of Sitanabad voted at the booth at Sonepura while others at Sitanabad is admitted by the respondent's witnesses. According to R.W. 12 about 150 voters of Sitanabad cast their votes at Sonepura booth. In face of such evidence we have to find that some people of Sitanabad did cast their votes at Sonepura. There is, however, no reliable evidence to prove that those voters of Sitanabad who cast their votes at Sonepura again, voted at Sitanabad. We have looked into the marked copies of the electoral roll of the two booths (Exts. 14 and 14/f) and although we find some identical names here and there in the two copies, there is no evidence worth the name to establish the identity of the voters alleged to have cast their votes at both the booths. We accordingly find that there was no double polling, as alleged by the petitioner.

22. In para. 2(k) of the election petition it is alleged that although the voting of about 622 voters of Tola Bhorha of village Simri was to be held at Simri on 17th and 18th January, 1952, the said voters were misled by the Socialist with the connivance of the respondent to vote at Turki on 11th January, 1952. The respondent denies the allegation in para. 19 of the written statement. It is stated that the voters voted at the places on the specified dates as announced by the Returning Officer. It is denied that any malpractice was resorted to by the respondent or by any of his workers. Although the respondent (R.W. 16) has

said that Bhorha is a mouza by itself the general evidence of the witnesses, however, is that Bhorha is a tola of mouza Simri and that it is at a distance of about six miles from tola Borba which stands recorded under mouza Bhatauni which is noted in the list of polling stations (Ext. 16) against booth No. 182 Suneshwar (Turki) U.P. School. The witnesses who speak on the point are P.Ws. 13, 14, 16, 17 and 26 on behalf of the petitioner and R.Ws. 14, 15 and 16 on behalf of the respondent. It is now an admitted position, as made out in evidence that tola Bhorha and tola Borba both lie within circle No. 5, P. S. Bakhtiarpur and that the voters of tola Bhorha were enrolled in the voters' list as being residents of tola Borba under mouza Bhatauni and that they accordingly cast their votes at the aforesaid booth at Turki and not at Simri.

23. The list (Ext. 16) mentions the name of Chak Bharo against booth No. 178 Simri U.P. School. It is not the case of the petitioner that Chak Bharo is the same as Bhorha. The respondent (R.W. 16) in para. 41 of his deposition has made it clear that Chak Bharo is a different village from Bhorha. It is an admitted fact that the voters of tola Bhorha were not recorded in the voters' list of the booth at Simri and so quite naturally they could not cast their votes at that booth. We do not accept the evidence of P.W. 13 and P.W. 14 that any proclamation was made by beat of drum that the voters of Bhorha will cast their votes at Simri. We find that as the names of the voters of Bhorha were entered in the voters' list of the booth at Turki they rightly voted at Turki booth.

24. The learned lawyer for the petitioner has urged that the voters of tola Bhorha while casting their votes at Turki wrongly represented themselves as being residents of tola Borba. There is no reliable evidence to support this allegation. On the other hand, the diary of the Presiding Officer (Ext. 5/e) clearly goes to show that the fact that those voters were of Bhorha was not concealed from him. The following passage of the diary is important:—

"In the beginning the Polling agents of Congress party filed a petition that voters came from Bhorha tola also which was at a distance of four miles and the name of this tola was not included in the Electoral Roll. I scrutinised the Electoral Roll, enquired from the dafadar and the Sarpanch and ascertained that the Bhorha tola also was in circle No. 5 and the names were quite correct. I had to follow the Electoral Roll and the polling went on. The sarpanch, the dafadars and the chowkidars helped the staff in identification. After a few minutes, those very people stated that they had no grievance. The polling went on peacefully and ended at 4 P.M."

We find that the voters of Bhorha did not misrepresent themselves as being residents of tola Borba and accordingly we do not accept the contention of the learned lawyer for the petitioner. We find that there was no illegal or mal-practice committed in the voters of Bhorha casting their votes at the booth at Turki.

25. In para. 2(1) of the election petition it is alleged that at Gaurimian Jagir polling station No. 199 on 21st January, 1952 about 81 female voters who were not entered in the electoral roll by their own names but were described merely by their husband's names were allowed to cast votes at the instance of the respondent and his agents, with his connivance and that in the same fashion about 200 female voters were allowed to vote on 18th January, 1952 at Khamaut polling stations Nos. 167 and 168. From the ordersheet of the Returning Officer (Ext. e) it appears that the petitioner did take some such objections before him in regard to which he made the following observation:—

"The other objection of Yadav Rajendra Prasad in the same petition is that about 199 female voters were passed and given ballot papers by the presiding officer though they (a slip for 'this') were not entitled to exercise franchise as their names were not entered in the electoral roll validly. In another petition he has said that in polling station No. 199, 81 such female voters were wrongly given ballot papers. There is no mention of this in the ballot paper account submitted by the Presiding Officer. In the Diary submitted by the Presiding Officer and just shown to me by S.D.O. Khagaria (Returning Officer for the Assembly constituency) the presiding officer has stated that during heavy polling some identity slips were issued on the basis of 'sudhipatra' and so ballot papers were issued by mistake. It appears from the diary that 81 such ballot papers were issued for this constituency at polling station No. 199. Unless the marked copy of the electoral roll is opened it cannot be ascertained which ballot papers were given to what voters and if the report of the Presiding Officer in his diary that 81 ballot papers

were issued to female voters whose names were not on the Electoral Roll is correct, but in rule 49 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, it is laid down that the Returning Officer shall not open the sealed packet of the marked copy of the electoral roll. So the report of the Presiding Officer cannot be verified. Then, again, even if these 81 votes are excluded, this will not make any difference because the difference in the total of votes polled by the candidates is 1,246."

"We have examined the marked copy of the electoral roll (Ext. 14/b) relating to polling stations Nos. 167 and 168 at Khamaut and we find that out of those female voters whose names were to be expunged according to Sudhipatra, 10 such voters of village Madhuban and 80 of village Mowar, that is, 90 in all, were allowed to cast their votes. Similarly we have examined the marked copy of the electoral roll (Ext. 14/d) relating to polling station No. 199 at Gaurimian Jagir and we find that out of those female voters whose names were to be expunged according to sudhipatra, 13 such voters of village Mian Jagir and 69 of village Gordoli, that is, 82 in all, were allowed to cast their votes. Thus in all 170 female voters who were not entitled to vote were allowed to cast votes at the aforesaid booths. We find that these votes are all illegal and they have to be excluded.

26. One of the important objections of the petitioner is with regard to the counting. His case as set forth in para. 2(m) of the election petition corresponding to para. 1(xiii) of the list is that due to the tampering of ballot boxes only 25 ballot papers were found in the ballot box of the petitioner relating to polling station No. 225 at Dumri, while 254 ballot papers were found in the box of the respondent as against the total votes of 400 polled at the said booth and that similarly in regard to polling station No. 258 at Sonbarsa, 754 ballot papers were found in the boxes of both the candidates, while the ballot papers actually issued by the Presiding Officer came to about 500 only. In paras. 3 and 4 of the election petition it is further alleged that the method of counting was also defective, inasmuch as about half a dozen boxes were opened at a time with the result that it was very difficult for the petitioner and his agent to watch the counting. There is also a general contention that the corrupt and illegal practices apart, the election is also bad due to the non-compliance of the various provisions of the Act and the Constitution which has materially affected the result of the election. The respondent in paras. 21, 24 and 25 of the written-statement has denied all the allegations of the petitioner. The respondent contends that there was no tampering of ballot boxes and that the counting was done under the direct and strict supervision of the Returning Officer in presence of the candidates and their agents according to rules.

27. The manner in which the counting was done has been taken in details from the respondent (R.W. 16) in his cross-examination in paras. 46 to 48. The counting was done in a *shamiana* enclosed by *kanat* within the court compound at Khagaria. The number of counting parties according to him did not exceed six and each counting party consisted of three persons. On the first day, the votes of the respondent were counted and on the second day, those of the petitioner. The ballot boxes of both the candidates were in the store room of the court building and from there all the ballot boxes of the respondent were brought and kept in the *shamiana* and thereafter the ballot boxes were taken out one by one, according to their serial number, examined first by the officers and then shown to the candidates and their counting agents and then they were opened for counting. The counting tables were all in front of the table of the Returning Officer, only about 6 ft. apart. The candidates and their counting agents were seated on a raised platform by the side of the table of the Returning Officer. The counting continued on both the days from 8 A.M. to nearabout 8 P.M. and there used to be short periods of recess, once at about 1 P.M. and again at about 5 P.M. The respondent is emphatic in his statement that during the period of recess the counting was entirely suspended and that the recess was not availed of so long as the counting of the ballot papers of the ballot boxes which had been opened was not completed. It is admitted that the counting on the different counting tables proceeded simultaneously. After the counting was finished on one counting table, the leader of the counting party of that table used to bring the counted ballot papers tied in bundles of 100 each to the Returning Officer and announce the total number of votes counted which the Returning Officer, after occasional checking used to note on form No. 14 and also announce that number before all present. The respondent emphatically denies that any defect was found in any of the ballot boxes at the time of counting or that the petitioner raised any objection while the counting was proceeding.

28. P.W. 12 Deokinandan Singh who was then the Head Clerk of the S.D.O's office at Khagaria and who used to be occasionally present at the time of the counting, substantially supports the evidence of the respondent. He has also stated that during the intervals when the Returning Officer used to go out of the *shamiana* the counting of votes used to remain suspended and that the recess was taken only when the counting of votes of each of the ballot boxes already opened for counting was completed. He has also stated that the counting was done in presence of the candidates and their counting agents who used to sit on a raised platform and that before the opening of a ballot box for counting, the Returning Officer used to examine its seal and also used to show them to the candidates and their counting agents and then it was opened and the ballot papers of that box, given for counting to one counting party. The same procedure was followed in the counting of the ballot papers of the other boxes. P.W. 12 is definite in his statement that one counting party used to count the ballot papers of only one ballot box at a time. The petitioner (P.W. 28) also admits that before the opening of the ballot boxes, they were shown to them from a distance of about 3 yards and thereafter they were broken open and distributed over the counting tables. He has alleged that the boxes were not shown or broken open one by one, but on this point, in face of the evidence of his own witness (P.W. 12) to the contrary, we are not prepared to accept his statement. The petitioner has also admitted that he and his counting agent used to go round the counting table in order to see the counting. It is, therefore, not probable that any malpractice could have been performed at the time of the counting. Admittedly the petitioner did not file and objection petition on the first day of the counting. He filed some petitions on the second day of the counting. Exts. B to B/4 are the copies of such petitions. These petitions, however, do not relate to any objection regarding the method of counting, but it appears from the ordersheet (Ext. E) of the Returning Officer that the petitioner did file a petition before him raising some such objection after the counting was over. In this connection we would quote the following passage from the order, dated 3rd February 1953 of the Returning Officer (Ext. E):—

"Yadav Rajendra Prasad has filed another petition stating that the counting of votes on 2nd February, 1952 was not regular because the counting of each box was not verified by me and sole-reliance was made on the officers and clerks requisitioned for the purpose of counting votes. No such complaint was made on 2nd February, 1952. This petition has been filed after the result of the counting of votes of both the candidates has been known. The counting of votes both yesterday and today has been done under my direct and strict supervision by the counting parties and test checks have been correctly done and there has been no irregularity. The difference is of 1,246 votes between the two candidates. The prayer for recounting of votes is unreasonable and is rejected."

It is clear from the above that the objections raised by the petitioner before us were not taken by him before the Returning Officer and that he took no objection whatsoever while the counting was proceeding either on the first day of the counting or on the second day and that even in the petition which he filed after the close of the counting he took no objection regarding the counting which took place on the second day, that is 3rd February, 1952.

29. The learned lawyer for the petitioner contends that the provisions of Rule 46, sub-section (1), clauses (i) and (ii) of the Representation of People Rules, 1951 in regard to the counting of votes have not been followed. These provisions are:—

"46. Procedure to be followed at the counting of votes:—

(1) On the date and at the time and place appointed under rule 44, the Returning Officer shall, before he commences to count the votes, read the provisions of section 128 to such persons as may be present. He shall then with respect to ballot boxes used at the poll proceed as follows:—

(i) All the ballot boxes placed for the counting of votes shall be counted and checked and the Returning Officer shall satisfy himself that all the ballot boxes used at the poll have been received and accounted for.

(ii) All the ballot boxes allotted to each particular candidate shall be separated from those allotted to any other candidate and placed together.

The learned advocate for the petitioner submits that the ballot boxes of both the candidates ought to have been brought in the *shamiana* and there, after counting and checking the Returning Officer should have satisfied himself that all the ballot boxes used at the poll have been duly received and then the ballot boxes of one candidate should have been separated from those of the other candidate. In this case the evidence is that on the first day of the counting, only the ballot boxes of the respondent were brought in the *shamiana* from the store room where the ballot boxes of both the candidates were kept in safe custody; and on the second day, the ballot boxes of the petitioner were similarly brought in the *shamiana* from the store room for purposes of the counting. It is not the case of the petitioner that any ballot box of himself or of the respondent was found missing. The objection as raised by the learned lawyer for the petitioner at the time of argument has also not been specifically taken in the election petition, nor has the Returning Officer been examined. Clause (i) of sub-rule (1) of Rule 46 requires that the Returning Officer should satisfy himself that all the ballot boxes used at the poll have been received and accounted for. It is just probable that the Returning Officer had so satisfied himself and also got the ballot boxes of the two candidates separated before the ballot boxes of the respondent were brought into the *shamiana* from the store room on the first day of the counting. In our opinion, there was substantially no violation of the provisions of clauses (i) and (ii) of sub-rule (1) of Rule 46 and that if there was any such violation, it was at best an irregularity which is of little consequence.

30. It is also contended by the learned lawyer for the petitioner that the provisions of sub-rule (2) of Rule 46 and as also those of Rule 49 have not been followed. These provisions are as follows:—

"46(2) The Returning Officer shall as far as practicable proceed continuously with the counting of the votes and shall during any intervals when the counting has to be suspended, keep the ballot papers, packets and other documents relating to the election sealed with his own seal and the seals of such candidates or election or counting agents as may desire to affix their seals and shall cause adequate precautions to be taken for their safe custody."

"49. Verification of accounts submitted by the Presiding Officer:—

The Returning Officer shall not open the sealed packets of the "tendered votes" or the marked copy of the electoral roll. He shall verify the accounts submitted by the Presiding Officers under rule 33 by comparing them with the statement prepared under clause (vi) of sub-rule (1) of rule 46 and with the number of the valid and the reject ballot papers, the unused ballot papers in his possession and the tendered votes list, and shall then reclose and reseal each packet which has been opened by him and shall record on each packet the description of its contents and the name of the constituency and the date of the election to which it refers."

The petitioner has not taken such objection specifically in the election petition. In this case, as discussed above, there is definite evidence to show that during the intervals, the counting was entirely suspended and that the recess was never taken unless and until the counting of the ballot papers of the boxes which were opened, was completed. In the circumstance and especially in the absence of any definite evidence to the contrary, it may safely be presumed that the provisions as contained in the latter part of sub-rule (2) were also observed. The certificate (Ext. 18) as given by the Returning Officer on form No. 16 according to rule 50 clearly goes to show that the verification referred to under rule 49 was also duly made and it appears that at that moment while verifying the accounts with reference to the ballot paper accounts submitted by the Presiding Officers under rule 33 on Form No. 10, the Returning Officer prepared the statement of such accounts which is Ext. 6. We find that the provisions of sub-rule (2) of rule 46 and of rule 49 were all duly followed by the Returning Officer.

31. It is true that on counting of the votes in regard to polling station No. 255 at Dumri it was found that there were only 25 valid votes in the ballot box of the petitioner and 254 such votes in the ballot box of the respondent, making a total of 279 only, whereas the total number of ballot papers issued was 472. Thus, there was apparently a shortage of 193 votes. Similarly, in regard to polling station No. 258 at Sonbarsa, 215 votes were found in the ballot box of the petitioner and 539 votes were found in the ballot box of the respondent, making a total of 754, whereas the total number of ballot papers issued was 573 out of which 9 were cancelled votes, thus the number of total valid ballot papers issued being 564 only. It would thus appear that in regard to polling station No. 258 there was an excess of ballot papers in the ballot boxes by 190. We have taken

the figures of the ballot papers found in the boxes from the ballot paper accounts (Exts. 13 and 13/a) as prepared by the Returning Officer on Form No. 14 and we have taken the figures of ballot papers issued from the ballot paper accounts on Form No. 10 as prepared by the Presiding Officer and also from the statement of such accounts (Ext. 6) as prepared by the Returning Officer. The discrepancies as found above are cited as an instance of tampering of ballot boxes by the learned lawyer for the petitioner. In this connection the following passage from the ordersheet (Ext. E) of the Returning Officer which has a direct bearing on the point is important:—

“.....He has stated in the petition that at the polling station No. 255 at U.P. School Dumri 25 ballot papers were found in his box while 254 ballot papers were found in the box of Mishra Suresh Chander while the total votes polled came to 400 that at polling station No. 258 (U.P. School Sonbarsa) the total ballot papers found in the boxes of the two candidates came to 764 while the ballot papers actually issued by the Presiding Officer came to about 500 only. It appears from the ballot paper account submitted by the Presiding Officer that in polling station No. 255, 472 ballot papers were issued and in polling station No. 258, 573 ballot papers were issued out of which 9 were cancelled at the polling station leaving a balance of 564 ballot papers. The total ballot papers found in the two boxes of the two candidates in polling station No. 255 comes to 279 and the total ballot papers found in the two boxes of the two candidates in polling station No. 258 comes to 754. It would thus appear that in polling station No. 255 there is shortage of 193 ballot papers whereas in polling station No. 258 there is excess of 190. This explains the difference which is not due to any tampering or irregularity or corrupt practice but this appears to be due to the following reasons:—

There was the same Presiding Officer for both the polling stations Nos. 255 and 258 and all the materials for election including ballot papers were supplied to him for all the polling stations in his charge at one and the same time before the elections started. For polling station No. 255 ballot papers Nos. 728001 to 729000 and 736701 to 736900 and for polling station No. 258 ballot papers Nos. 729001 to 730000 were supplied to him. It appears that ballot papers meant for polling station No. 258 were issued by him at polling station No. 255 and *vice versa*. It appears that from the set or ballot papers issued for polling station No. 255, 539 ballot papers were found in the ballot box of Mishra Suresh Chander and 25 ballot papers were found in the ballot box of Yadav Rajendra Prasad and the total of the two comes to 564 which tallies with the ballot paper account submitted by the Presiding Officer for polling station No. 258. From the set of ballot papers supplied to Presiding Officer for polling station No. 258, 254 ballot papers were found in the ballot box of Mishra Suresh Chander and 215 ballot papers were found in the ballot box of Yadav Rajendar Prasad, the total of which comes to 469 as against 472 shown as total issue in the ballot paper account submitted by the Presiding Officer for polling station No. 255. The difference of three ballot papers may have been due to those ballot papers having been dropped in the ballot boxes for the Assembly constituency on account of the ignorance of the voter or the voter might have taken them away without dropping them. At the time of counting of votes of Yadav Rajender Prasad, it appears that the ballot box for P.S. No. 255 was wrongly read as for 258 and the ballot box for P.S. No. 258 was wrongly read as for 255. I am satisfied that this has not prejudiced any candidate and has not made any difference in the total number of ballot papers found in the ballot boxes of the respective candidates. The objection is not reasonable and can not be accepted and is overruled.”

We have carefully considered the question and we accept the explanation as given by the Returning Officer and we also find that the discrepancies were most probably due to the misreading of the number of the ballot boxes of the petitioner, with the result that the total number of ballot papers found in the ballot box of the petitioner for booth No. 255 was wrongly noted against booth No. 258 and *vice versa*. If the results are calculated after correcting the aforesaid mistake, it would appear that there was no difference between the total number of ballot papers issued and the total number of ballot papers found in the boxes of the two candidates in regard to booth No. 258 and that in regard to booth No. 255

there was only a shortage by 3 votes which may be due to several reasons as pointed out by the Returning Officer and which is of no consequence. We accordingly find that there was no tampering of ballot boxes at polling stations Nos. 255 and 258.

32. In this connection, however, an important question arises for our consideration whether or not there was a breach of the provisions of rule 47, sub-rule (1), clause (c) which runs as follows, as contended before us by the learned lawyer for the petitioner:—

“47. Grounds for rejection of ballot papers.—(1) A ballot paper contained in a ballot box shall be rejected if—

(c) it bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used.”

It is evident from the ordersheet of the Returning Officer that the ballot papers meant for polling station No. 255 were wrongly issued by the Presiding Officer for polling station No. 258 and similarly the ballot papers meant for polling station No. 258 were wrongly issued by him for polling station No. 255. On this point the decision in the case of Damodar Goswami v. Narain Goswami and others, A.I.R. 1955 Assam 163 is, in our opinion, quite conclusive. In this case it is reiterated that the provisions of rule 47(1)(c) are mandatory as held in A.I.R. 1955 Supreme Court 233(A). It has been further observed by Sarjoo Prasad, C. J.—

“The Returning Officer has no power under rule 47 to accept votes which did not bear the distinguishing mark or the prescribed serial number, on the ground that it was due to the mistake of the Presiding Officer in delivering the wrong ballot paper.”

Such being the case the ballot papers of both the candidates which did not bear the distinguishing mark prescribed for the election have to be rejected under rule 47(1)(c) as pointed out by their Lordships of the Supreme Court in the case cited above. We find that the result of the election has been affected by 1,033 votes out of which the petitioner secured 240 votes and the respondent secured 793 votes which would be evident from the figure as given above.

33. The learned lawyer for the petitioner at the time of argument has taken pains to point out with reference to Exts. 6, 13 and 13/a read along with the ballot paper accounts (Exts. 19 series) that in regard to certain other polling stations also there were certain discrepancies between the total number of ballot papers found in the boxes of the two candidates and the total number of ballot papers issued. It is pointed out that in some cases the total number of votes polled was in excess of the total number of ballot papers issued, whereas in some other cases there was a shortage. In one case, that is, in regard to polling station No. 61, we have found that the apparent excess of 99 votes was due to the mistake of calculation in the ballot paper account (Ext. 19/f). Out of 1,100 ballot papers received for this booth, 438 ballot papers were returned unused and one ballot paper was cancelled leaving a balance of 661 and so this figure of 661 ought to have been noted as the number of ballot papers in the ballot boxes against item No. 6 of the ballot paper account (Ext. 19/f), but instead of 661 by mistake 561 only has been noted. If the correct figure of ballot papers issued be taken into account, it would appear that there was shortage by one only which is negligible.

34. On making further verification in the manner as indicated above on the basis of Exts. 6, 13, 13(a) and 19 series we find that apparently there was an excess by 18 votes in regard to polling station No. 72 and an excess of 15 votes in regard to polling station No. 86 and that similarly there was a shortage of 187 votes in respect of polling station No. 93 and a shortage of 176 votes in regard to polling station No. 187. We must say that on the materials before us we do not find any reasonable explanation to account for these discrepancies. The note of the Returning Officer in his verification certificate (Ext. 18) as given on Form 16 under rule 50 that the only discrepancy found in some cases was of a little shortage, does not appear to be quite intelligible to us. It is rather unfortunate that the petitioner did not take specific objections regarding these matters in the election petition, nor has he taken care to examine the Returning Officer or to call for the packages containing the ballot papers found in the boxes as also the packages of ballot papers returned unused by the Presiding Officers and also all the marked copies of electoral rolls. It was for the first time that these objections were raised before us by the learned lawyer for the petitioner in course of his argument. The respondent has had no opportunity to give any explanation for the apparent discrepancies. In the absence of the relevant documents which

could possibly explain the discrepancies, we are unable to hold that, in fact, there were the discrepancies as stated above and we overrule the objections of the petitioner in regard to counting on that account.

35. For reasons as given above, we find that there was no tampering of ballot boxes and that the election is not void on that account. Issue No. 6 is accordingly answered in the negative. We further find that there was no illegality in the method of counting and that the result of the election has not been affected thereby. Issue No. 7 is also answered in the negative.

36. We, however, find that two illegalities were committed due to the non-compliance of the provisions of law, namely, (1) by wrongly allowing 170 female voters whose names were expunged according to *sudhipatra*, to cast their votes at polling stations Nos. 199, 167 and 168 and thus intringling the provisions of section 62(1) of the Act and (2) by acceptance as valid votes of ballot papers issued at polling station Nos. 255 and 258 at Dumri and Sonbarsa, respectively, against the provisions of rule 47(1)(c) and that the result of the election has been affected by 1033 votes polled at Dumri and Sonbarsa and further by 172 votes of the aforesaid female voters. From the figures as given above, it would appear that at Dumri and Sonbarsa the respondent secured 553 votes in excess of the votes of the petitioner. Even if we accept for a moment that all the aforesaid 170 female voters whose votes we have found to be illegal, casted their votes in favour of the respondent, the total number of invalid votes secured by the respondent would come to 723 only. As the respondent has been declared elected by a majority of 1246 votes, we find that the result of the election has not been materially affected by the inclusion of the aforesaid illegal votes. Issue No. 5 also is accordingly answered in the negative.

37. Issue No. 11.—In para. 8 of the election petition it is alleged that the petitioner did not deposit the security money as required under law for standing as a candidate for the House of People. In para. 1(xxi) of the list the petitioner has amplified his contention by saying that the respondent did not deposit the security money as required under law for standing as a candidate for the House of People but that he deposited for the membership for Parliament and not for the House of People. This contention, as it stands, has not been pressed by the learned lawyer for the petitioner at the time of argument. The main contention on this point which he has urged is that the respondent did not tender the required security money of Rs. 500 in cash to the Returning Officer as required under sub-section (2) of section 34 of the Act which runs as follows:—

“34(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) of section 33 the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.”

In this case it is admitted that the respondent did not deposit the amount in the Reserve Bank of India or in any Government Treasury. The respondent (R.W. 16) has pledged his oath and stated that before filing his nomination paper he had offered Rs. 500 to the District Magistrate, Monghyr who was the Returning Officer for the constituency in question and the same was accepted by his Nazir under his orders and in his presence and this finds support from the Nazir's receipt (Ext. 4) and its counterfoil (Ext. 4/a). The respondent in para. 50 of his deposition has said that it may be that his first nomination paper was filed before the Returning Officer by Bhubneshwar Singh Bose and Shri Suresh Singh along with a receipt showing deposit of Rs. 500 with the Nazir, as noted in the ordersheet of the Returning Officer (Ext. 12) of the date 21st November, 1951. These facts, however, do not falsify the statement of the respondent that the security money was first tendered in cash to the Returning Officer and that it was under his orders that the amount was received by his Nazir. Again on this point the Returning Officer who was the most competent witness to deny the assertion of the respondent has not been examined. There is also no allegation in the election petition that the respondent did not tender the security money in cash to the Returning Officer. We, therefore, see no reason to reject the statement of the respondent and we find that he did tender the money in cash to the Returning Officer and that it was under his direction that the money was accepted by the Nazir. We find that there was no violation of the provisions of sub-section (2) of section 34 of the Act and that the security money deposited by the respondent was perfectly valid. Issue No. 11 also is answered in the negative.

38. Issue No. 4.—One of the important incidents which, if proved, would amount to undue influence within the meaning of section 123(2) of the Representation of People Act, 1951 (hereinafter referred to simply as the Act), is the incident which is alleged to have taken place at Pachauth U.P. School booth No. 251 on 8th January, 1952. Regarding this incident P.W. 10 and P.W. 22 are the main witnesses on facts examined on behalf of the petitioner. According to P.W. 10, on the second day of the polling at about 2 p.m. there was an altercation between the police on the one side and Brajraj Bahadur Singh alias Lal Babu, a Socialist worker and the polling agent of Surjnarain Singh, a candidate for State Assembly seat, and one Ramji Sharma, another Socialist worker on the other, due to the insistence of the latter that a number of voters should be admitted into the polling enclosure at a time, whereas the police were saying that the workers should be admitted one by one. It is further stated that the two Socialist workers shouted to the voters inside the polling enclosure to come out, which they did, with the result that about 40 to 50 female voters and about 14 to 15 old voters fled away from the place, out of fear. The evidence of P.W. 22 Madan Mohan Prasad Singh who worked as polling agent of Saiyed Jamaluddin, a candidate for State Assembly seat, is that on the second day of the polling Brajraj Bahadur Singh and Ramji Sharma approached the voters who had already assembled inside the polling enclosure and asked them to go out and that the police party asked them not to do so and on this they started making hulla, with the result that some of the voters there left the place. He has also stated that both Brajraj Bahadur Singh and Ramji Sharma were Socialist workers.

39. The story as given by the Presiding Officer Shri J. Sahay (P.W. 25) in his diary, dated 8th January, 1952 (Ext. 5) is:—

"Today from the very beginning the Socialist workers were bent upon creating mischief. The Polling Agent of Suraj Narain Singh, whose name is Brajraj Bahadur Singh, incited the voters against the police saying that the police were insulting them. The police was only busy in keeping the law and order by allowing very few voters inside the enclosure at one time. At about 2 p.m., Brajraj Bahadur fled an objection petition which has been forwarded to the Returning Officer. He then told the voters that they should follow him out of the enclosure, and the voters followed him outside, where one Ramji Sharma was found inciting the voters. It appeared that the voters would take violent attitude. I immediately stopped polling and with great difficulty brought the situation under control, with the help of the police. The polling was again resumed after some time and continued up to 4-30 p.m."

40. The respondent (R.W. 16) has denied that there was any threat or obstruction or intimidation to any voter on behalf of the Socialist Party at the booth at Pachauth. He admits that he himself did not attend polling at Pachauth on any day. He is, therefore, not competent to deny the incident. R.W. 18 Satyanarain Singh has also denied that there was any intimidation or overawing by Brajraj Bahadur at that booth. From his evidence it appears that he remained at the booth practically the whole day on the second day of the polling. He denies that the polling at that booth was suspended on account of any disturbance.—a statement which is quite contrary to the recitals in the diary (Ext. 5) of the Presiding Officer Shri J. Sahay. We find that R.W. 18 is not telling the truth and we do not place any reliance on his evidence. In this case we find that although there is some variation regarding the minor details of the occurrence as given by P.W. 10 and P.W. 22, the main facts about the incident, however, find ample corroboration from the statements in the diary (Ext. 5). It is true that the name of Ramji Sharma is not mentioned in the election petition, but in view of the aforesaid statements in the diary we find that the story that he, too, was present at the booth and took part in the occurrence as alleged by P.W. 10 and P.W. 22 is not an afterthought.

41. The main facts which are established by the evidence of P.W. 10 and P.W. 22 considered along with the diary (Ext. 5) are that Brajraj Bahadur Singh alias Lal Babu who was not only the polling agent of Surjnarain Singh, admittedly a Socialist candidate for State Assembly seat, but also a Socialist worker, did incite the voters against the police and that he went to the length of asking the voters to come out of the polling enclosure and the voters did follow him outside and that Ramji Sharma was also found inciting the voters. It is also proved that due to the conduct of the aforesaid Socialist workers, the situation became so difficult that the Presiding Officer had to stop the polling for a while.

42. It is in evidence that Ramji Sharma was polling agent of the respondent at Manskhutia U.P. School booth,—a fact hesitatingly admitted by the respondent (R.W. 16) and also proved by the letter of authority (Ext. 17) dated 7th January, 1952 admittedly granted by him. The incident at Pachauth took place on 8th January, 1952 and the polling at Manskhutia U.P. School booth was held on 18th January, 1952 and 19th January, 1952 as it appears from the chart of polling arrangements (Ext. F). Although there is no evidence that Ramji Sharma was a polling agent of the respondent at the booth at Pachauth, there is no doubt that he was one of his workers. It is not, however, the case of the petitioner in the election petition that the incident at Pachauth took place at the instance of Ramji Sharma or with his connivance and so we exclude from our consideration whether or not Ramji Sharma was respondent's agent and the alleged corrupt practice at Pachauth was committed at his instance or with his connivance within the meaning of section 123(2) of the Act. The respondent (R.W. 16) has denied that Brajraj Bahadur had any concern with his election. He has also stated that at none of the booths his workers and polling agents were the same as those of Surjinarain Singh, but we have grave doubt if he has placed before us all the cards on the table. He admits that generally for each polling booth he used to appoint one polling agent and two relief polling agents. It is not understood why he did not appoint any such agent, as he says, for the booth at Pachauth. In para. 20 of his deposition, he makes a significant statement when he says that he cannot say if at places where he had no worker of his own, the general workers of the Socialist Party used to work for him. He has not produced the register showing the names of his workers, polling agents and relief polling agents which he admittedly maintained, although it was specifically called for from him on petitioner's petition dated 23rd December, 1954 by order No. 28 of the same date.

43. The respondent was admittedly a nominee of the Socialist Party. It appears from the evidence of P.W. 11 that the Socialist Party had its office at Khagaria and that was also the office of the respondent. The respondent (R.W. 16) also admits that his election office was at Khagaria. R.W. 12 and R.W. 14 have further stated that the Socialist Party used to do propaganda in the villages during the days of the election. The evidence of R.W. 1 and R.W. 16 also goes to show that leaflets were distributed on behalf of the Socialist Party in connection with the election. It is also in evidence that the Socialist Party used to have a camp of its own near the polling booth, where the voters apparently coming on the side of the Socialist candidates used to get red slips before entering into the polling enclosure. There is no evidence that the respondent had a separate camp of his own apart from the camp of the Socialist Party at any booth. The respondent (R.W. 16) admits in para. 53 of his deposition that he gave Rs. 500 to Shri Mahendra Narain, Secretary of the Socialist Party on 15th January, 1952, for refreshment expenses of the workers in each of the polling booths in Gogri P. S. In para. 52 of his deposition he further admits that he paid Rs. 500 to Basudeo Singh for meeting election expenses on his behalf in this Constituency and for which he granted the voucher (Ext. 9/b). The respondent conceals that Basudeo also was the Secretary of the Socialist Party,—a fact amply borne out by the voucher (Ext. 9/b) itself. The voucher further shows that the payment was made for the refreshment and travelling expenses of the workers and polling agents at all the booths within P.S. Ballia. At this moment a question arises whether or not, in the particular circumstances of the case, we may reasonably infer that the Socialist Party and the Socialist workers as such, including Brajraj Bahadur, should be deemed in law to be respondent's agents—within the meaning of section 123(2) of the Act.

44. The definition of the word 'Agent' as given in section 79(a) of the Act is only illustrative, as pointed out in Doabia's Law of Election and Election Petitions, Second Edition, para. 249, page 127. It is well-settled that agency in election law is of much wider connotation than under the ordinary law of contract. As Halsbury puts it in para. 544, Vol. XII, 1910 Edition "the candidate's liability under this principle may extend to the acts of every person who is *de facto* a member of the staff which is conducting the election and whose services are directly or indirectly recognised or made use of by the candidate or his election agent, whether such person be paid or unpaid". There is no doubt that in certain circumstances a political party which sets up a candidate may be deemed to be his agent and the candidate may be held responsible for the corrupt practices committed by the workers of the said political party. In such cases however, "the crucial test is whether there has been an employment or authorization of the agent by the candidate to do some election work or the adoption of his work when done", para. 544, *ibid*. In this case we find that some important links are missing.

45. Pachauth lies within the P.S. Chautham (*vide* the list of polling stations, Ext. 16). There is nothing to show that the respondent paid for the refreshment

expenses of the workers working at booths within Chautham P.S. through the Secretary of the Socialist Party as it was done in regard to the workers of Gogri and Bailla P.S. There is no evidence that Brajraj Bahadur, apart from acting as polling agent of Surjnarain Singh, did any work on behalf of the Socialist Party as such or that he did anything for the respondent at any stage of the election. There is no evidence that the respondent acquiesced in or ratified the said conduct of Brajraj Bahadur at any time. The case of Abdul Wali Khan v. Ehtisham Mahmood Ali, I.D.I.E.C. 149, though in point, has no application to the facts of this case. In that case the candidate was set up by the Provincial Muslim League and there was evidence to show that it did canvassing for him at his request or with his knowledge and organised election meetings in support of his candidature some of which he himself addressed and an official of the Muslim League kept his election accounts and employed most of his workers. His admitted agent Nazir Yazdan was present at the time of the incident, besides others whose conducts were impugned and who also were his workers. There are no such features in the present case. We find that in this case it would not be reasonable to infer that Brajraj Bahadur was an agent of the respondent within the meaning of section 79(a) of the Act.

46. In the election petition it is not the case of the petitioner that simply because Brajraj Bahadur was a Socialist worker, the respondent should be held responsible for his conduct nor was any such contention raised before us by the learned advocate for the petitioner in course of his argument. The case of the petitioner in the election petition is that the alleged corrupt practice at Pachauth was committed at the instance of the respondent. The respondent has denied that he was present at that booth on the days of the polling. There is no evidence to the contrary. There is also no reliable evidence to show that the said incident took place at his instance or with his connivance. We, therefore, find that the respondent is not responsible for the Pachauth incident.

47. Moreover in this case it is extremely doubtful if the incident, as alleged, can reasonably be said to be an interference within the meaning of section 123(2) of the Act. The evidence on the record only goes to show that there was some altercation between the police and some Socialist workers including Brajraj Bahadur and in pursuance of that, Brajraj Bahadur asked those who were inside the polling enclosure to come out of the enclosure which they did. There is no evidence that they asked the voters to go away without casting their votes or that, as a matter of fact, those persons who came out of the enclosure went away without exercising their right of franchise. None of those persons has been examined. In our opinion, therefore, the conduct of Brajraj Bahadur does not amount to undue influence within the meaning of sub-section (2), section 123 of the Act.

48. The next important incident alleged is the one which took place at Sonbarsa U. P. School booth. The polling at this booth was held on the 14th, the 15th and the 16th January, 1952 and the alleged incident is said to have taken place on the third day of polling, that is on 16th January, 1952. On this point the evidence of P.W. 19 Mahabir Mandal is that Jageshwar Singh, Suresh Prasad Singh and Anand Singh who were workers of the Socialist Party, entered inside the polling enclosure and on reaching there they asked the voters assembled there to go out of the enclosure. He has further stated that as those voters were against the Socialists, the persons aforesaid were threatening them to go out and that as a result of their conduct, about 50 to 60 voters fled away from inside the polling enclosure. The aforesaid story does not find mention in the election petition. In para. 2(g) corresponding to para. 1(vii) of the list, it is simply stated that the three persons named above who are all Socialist workers of village Kaithi were found behaving in disorderly manner in order to scare away the voters. The exact nature of their disorderly behaviour is not disclosed in the election petition, nor is there any mention that as a result of their conduct the voters went out of the polling enclosure. P.W. 19 has further stated that at the time of the alleged incident the voters of Sonbarsa and Nabtolla were within the enclosure. None of those voters has been examined.

49. P.W. 22 Madan Mohan Prasad Singh who worked as polling agent of Saiyed Jamaluddin, a candidate for State Assembly seat, has quite a different story to tell about the said incident. He has stated that one Jageshwar Singh, a Socialist worker and two others whom he did not recognise proceeded to the place where the voters had already assembled inside the polling enclosure and on reaching there they asked them why so many of them had assembled there when they should have reached there one by one, that Jageshwar Singh and his two other companions then started making hulla and that when the police party desisted them from doing

so, they left the place and also took away with them several of the voters who had assembled there.

50. P.W. 24 Ghanshyam Singh a sitting Member of the Bihar Legislative Assembly gives a third story regarding the aforesaid incident. His version is that on the third day of the polling at about 2 or 2-30 p.m. several voters most of whom were Congress supporters, entered into the polling enclosure and on this Jageswar Prasad Singh, Suresh Prasad Singh and another entered the polling enclosure and enquired from the aforesaid voters why they had gone there all at a time and they asked them to get out of the enclosure as that would create hulla. The voters, however, refused to leave the place and on this, it is alleged, Jageswar Prasad Singh and his two other companions pushed some of them and as a result of this some of the voters left the place and went out of the polling enclosure. This witness has further added that the aforesaid three persons were not only Socialists but also workers on behalf of the respondent. He says that he informed the petitioner about the said incident shortly before the filing of the present election petition. Still the story as given by him does not find mention in the election petition. It is important to note that the petitioner does not say in the election petition that Jageswar Prasad Singh and his aforesaid companions were workers of the respondent.

51. In the diary (Ext. 5/d) dated 16th January, 1952 of Shri J. Sahay (P.W. 25), the Presiding Officer of the aforesaid booth, it is simply stated that three persons of village Kaithi, namely, Jageswar Singh, Suresh Prasad Singh and Anandi Singh were found behaving in a disorderly manner and were turned out by the police out of the polling station and they appeared to be annoyed afterwards. In the diary also there is no allegation that the aforesaid three persons were workers of the respondent, nor is there any mention that they were even Socialist workers or that they were scaring away the voters.

52. The petitioner (P.W. 26) gives only a hearsay account of the occurrence and he, too, goes to the length of saying that the aforesaid three persons were workers of the respondent. We, however, find that this case is an afterthought. It is, of course, in evidence that Bhubneshwar Singh Bose, who is the brother of Jageswar Singh, acted as proposer on the first nomination paper of the respondent. It is also in evidence that Bhubneshwar Singh Bose was present in the Court room on several dates during the hearing of this case. Simply from these facts, it would not be reasonable to infer that Jageswar Singh was a worker of the respondent.

53. The respondent (R.W. 16) has stated that he had gone to Sonbarsa U. P. School booth on one or two days of the polling there and he has denied that there was any disturbance at that booth within polling enclosure. It is just probable that the respondent was not present at the booth at the time of the incident and there is no positive evidence that he was present at that moment. But there is no doubt that some incident did take place at Sonbarsa U. P. School booth on 16th January, 1952 due to the disorderly behaviour of the aforesaid three persons,—a fact which finds ample support from the diary of the Presiding Officer (Ext. 5/d) as also from the suggestion made to P.W. 24 in cross-examination. There is, however, no reliable evidence to prove that Jageswar Singh and others were Socialist workers or workers for the respondent and we find that the respondent was in no way responsible for the aforesaid incident.

54. Another important incident alleged is said to have taken place on 18th January, 1952 at Usari L.R.D. Ward's Estate Kachahari booth No. 237. Regarding this incident the case of the petitioner in para. 2(h) of the election petition corresponding to para. 1(viii) of the list is that on the date and at the place as mentioned above the voters who were going to cast their votes were threatened by the Socialist workers and on protest by the Congress workers, were beaten as a result of which a large number of voters had to go back out of fear without exercising their right of franchise. It is further stated that a complaint to this effect was lodged at Gogri P.S. by Bhagwan Das who stated before the police that Suraj Yadav was dragged by Manohar Bhagat and Boudha Gope who also tore his kurta.

55. The said Bhagwan Das (P.W. 20) gives a different account of the incident. His story is that on the second day of the polling at the said booth he was taking some Congress voters to the booth and when they were on the road close to the booth, certain persons obstructed them from proceeding further and two of them, namely, Manohar Yadav and Lodhal Gope, who were Socialist workers, forcibly dragged one of the voters, namely, Sukar alias Surju Yadav and also slapped and fisted him and during the altercation his kurta was also torn. He lodged an

information about the incident at Gogri P.S. The saneha is Ext. 2/a. P.W. 2 is the officer-in-charge of the Gogri P.S. who made the entry (Ext. 2) about it in the station diary.

56. In the saneha, it is simply stated that Manohar Yadav and Lodha Gope forcibly dragged away his voter Sukar Yadav of Goraiya Bathan and also pushed and fisted him and tore away his kurta. The last sentence of the saneha probably goes to show that Sri Gope was the name of the man who snatched away. This is not quite intelligible and no evidence has been led to this effect. It is important to note that in the saneha there is no mention about the general obstruction to a number of Congress voters while they were going to cast their votes at the booth as alleged by P.W. 20. It is also not mentioned that Manohar Yadav and Lodha or Lodhai Gope were Socialist workers. In the list, even after the amendment, the name of Lodha or Lodhai does not appear but instead one Boudha Gope is mentioned. From the election petition it would appear that a number of voters were beaten, but in the evidence only one of the voters is alleged to have been assaulted. The said Sukar *alias* Surju Yadav, though alive, has not been examined.

57. If such an incident had really taken place close to the booth, in ordinary course of human conduct and especially when a saneha was lodged at P.S. Gogri, a complaint about it would have been surely made before the Presiding Officer Mr. N. C. Ganguly as well, but his diary (Ext. 5/g) dated 18th January, 1952 of the said booth makes no mention of the alleged incident. From the number of votes polled as mentioned at the foot of the diary, the learned lawyer for the petitioner has urged that only a few voters cast their votes in the afternoon and on this ground he has asked us to draw an inference in support of the aforesaid incident. There might be several reasons for the fall in the number of voters casting their votes in the afternoon. We do not accept the contention of the learned lawyer for the petitioner and we are unable to draw an inference in support of the alleged incident as suggested.

58. The respondent (R.W. 16) has denied that there was any altercation or assault or overawing of any voter by any Socialist worker at the said booth as alleged. He has denied that any voter went away from the booth without casting his vote, due to fear. He had himself gone to the booth on one of the days of the polling. R.W. 7 Shibakanta Misra, brother of the respondent as also R.W. 13 Dasrath Jha, a worker for the respondent at Usari Booth, have also denied the incident. In this case, we find that the petitioner has failed to prove beyond all reasonable doubt that any such incident took place as aforesaid or that there was any overawing of the voters by the Socialist workers at Usari L.R.D. Wards Estate Kachahari booth on 18th January 1952 as alleged.

59. A most glaring instance of corrupt practice as alleged is the one resulting from the close association and collusion of the respondent's brother Shibakanta Misra (R.W. 7) with Mr. N. C. Ganguly who admittedly acted as the Presiding Officer at several booths in the constituency in question. In this connection the allegations of the petitioner in the election petition are four-fold, namely, (1) that Shibakanta Misra was on closest terms with Mr. Ganguly, (2) that he used to sit as an election agent of the respondent although he was not, (3) that Mr. Ganguly, in collusion with Shibakanta Misra, did not allow Nageswar Prasad Yadav, polling agent of the petitioner, to enter the polling booths wherever he was in charge of the polling and (4) that the petitioner boxes were despatched unsigned and unsealed by Mr. Ganguly wherever he was the Presiding Officer. All these allegations are categorically denied by the respondent in paras. 23 and 26 of the written statement. It is further alleged that the respondent's brother Shibakanta Misra and Mr. Ganguly did not pull on well during the days of polling.

60. Mr. Ganguly was for sometime posted as Judicial Magistrate at Khagaria and R.W. 7 Shibakanta Misra admits that he knew him from before the election. P.W. 1, who is a practising Mukhtear at Khagaria since the year 1946 and also a member of the Khagaria Club since its inception as also its Secretary from 2nd July, 1952 to 3rd April, 1954 and again since 27th January, 1955, has stated that Mr. Ganguly and Shibakanta Misra were both members of the Club since its inception and also in January 1952. Their names appear in the Subscription Book of the Khagaria Club for the month of January, 1952. The relevant entries are Exts. 1 and 1/a in this book which go to show that they were members of the Club in January, 1952. There is no reason to disbelieve the evidence of P.W. 1 and, as a matter of fact, R.W. 7 Shibakanta Misra does not deny that he and Mr. Ganguly were both members of the Club in January, 1952. P.W. 4 Doman Mian who is the chowkidar of Gogri-Jamalpur Dak Bungalow which is close to L.R.D. Wards Estate Office at Usari, has been examined to say that during the

days of polling, Mr. Ganguly used to stay in the Dak Bungalow and during the period of his stay, Shibakanta Misra used to meet him and also to have tea with him in the Dak Bungalow. The Register of the visitors admittedly maintained at the Dak Bungalow which would have been the best evidence to show that Mr. Ganguly had stayed in the Dak Bungalow during the days of the polling, has not been produced. Although P.W. 4, according to his own statement, has been working as the chowkidar of the Dak Bungalow for the last 20 to 22 years, he is not in a position to name any other officer staying at the Dak Bungalow, except Mr. Ganguly. He does not appear to be a reliable witness and we do not place any reliance on his testimony.

61. P.W. 8 Ram Bahadur Singh, who acted as polling agent of Sumitra Devi Mandal, a candidate for State Assembly seat, has also stated that Shibakanta Misra used to sit near the Presiding Officer Mr. Ganguly and they used to take tea together. He has further stated that whenever the Presiding Officer used to move about in the compound of the booth, Shibakanta Misra used to accompany him. In cross-examination he makes several allegations against Mr. Ganguly which are not pleaded in the election petition and which do not find corroboration by any other reliable evidence. This witness appears to be making exaggerations and we do not accept his evidence. P.W. 11 Mahendra Jha has stated that during the days of polling he once found Mr. Ganguly taking his food with Shibakanta Misra at the Gogri Ashram of the respondent. Although he claims that he was a worker of the respondent during the days of the election and that he had been to the Ashram for bringing money from the respondent for meeting the election expenses, he is not in a position to say if there was any polling booth at Gogri during the last General Election,—a fact amply proved by other evidence on the record. He is not in a position to say in what connection Mr. Ganguly had gone to Gogri Ashram. He also appears to us to be an unreliable witness. P.W. 18 Ramdeo Mahto who has also said that Shibakanta Misra used to sit near Mr. Ganguly at some booths, does not speak about their taking tea together. P.W. 21 Narain Mandal speaks of a party given in October, 1952 to Mr. Ganguly on behalf of the Bar Library at Khagaria in which it is alleged the respondent and his brother Shibakanta Misra both came uninvited along with Mr. Ganguly. Although after that incident four other parties have been given on behalf of the Bar Association this witness does not remember if on any of these occasions any uninvited guest attended the party. He has given no particular reason for his remembering the aforesaid details of the party given in October, 1952. We, therefore, do not consider it safe to accept his aforesaid statement.

62. R.W. 7 Shibakanta Misra has denied that during the period of polling he had any occasion to take tea or dinner with Mr. Ganguly. He has denied that he invited him or that he was invited by him for tea or dinner during the days of polling. Although we find that Mr. N. C. Ganguly and Shibakanta Misra were known to each other as members of the Khagaria Club, there is no reliable evidence to prove that they took tea or dinner together during the days of the polling. Moreover, even if it be accepted for a moment that they took tea or dinner together on some occasions, that fact by itself would not be of any importance for section 100(3)(b) of the Act makes an exception in respect of such corrupt practices which take the form of customary hospitality and which do not affect the result of the election. In case, however, the taking of tea or dinner together be found to be outer expressions of deep-seated collusion between the parties that would, indeed, be of far reaching consequence. As we proceed, we shall try to discover if there is any reliable evidence to prove such collusion.

63. From the case of the petitioner in para. 2(o) of the election petition corresponding to para. 1(xv) of the list, it would appear that Shri Nageswar Prasad Yadav was the polling agent of the petitioner at several booths presided over, by Mr. Ganguly. The evidence of P.W. 5 Nageswar Prasad Yadav, however, is that he was petitioner's polling agent at Chandpur Dahgana booth only. He does not speak about his acting as petitioner's polling agent at any other booth. He has, of course, stated that Mr. Ganguly did not allow him to work as polling agent although he showed to him his letter of authority and so he had to stay outside the polling enclosure on both the days of polling at Chandpur Dahgana. In cross-examination he has stated that he reached the booth at about 9 A.M. and that the polling was to start at 10 or 10-30 A.M.—a statement which is quite contrary to the actual fact. It is extremely doubtful that he was at all a polling agent as alleged. He admits that the S.D.O., Khagaria, who was the returning officer in regard to the election for the State Assembly seats, arrived at the booth on the first day of the polling at about 3-30 P.M. and that he did not file any written complaint before him against the conduct of the Presiding Officer in not allowing him to work as petitioner's polling agent. It is said that he submitted

a written report to the petitioner in regard to this incident but that report has not been produced.

64. P.W. 18 Ramdeo Mahto, who was a candidate for the State Assembly seat, has stated that Mr. Ganguly did not allow the polling agent of the petitioner to work as such at two booths, namely, Usari L.R.D. Wards Estate Kachahari booth and Chandpur Dahgana U.P. School booth. He does not specifically name P.W. 5 Nageshwar Prasad Yadav as the polling agent of the petitioner who was not allowed to work as such at Chandpur Dahgana. He says he does not know the names of the polling agent of the petitioner at the said two booths. The petitioner (P.W. 26) himself is not sure if P.W. 5 Nageshwar Prasad Yadav was his polling agent at Chandpur Dahgana. In paragraph 8 of his deposition he has stated that he appointed a polling agent for each of the booths where Mr. Ganguly presided, that he gave a letter of authority to each of the polling agents in regard to their appointment and that his polling agents were not allowed to sit as such in spite of their showing the letter of authority. From his evidence it would appear that there were different polling agents on his behalf for the different booths, but this does not appear to be his case in the election petition. There is no allegation in the election petition that any other polling agent besides Nageshwar Prasad Yadav was not allowed to work as such on his behalf. P.W. 8 Ram Bahadur Singh has alleged that he acted as polling agent on behalf of the petitioner at Gogri Brahmantoli booth where Mr. Ganguly presided and that he was not allowed to work as such by Mr. Ganguly at that booth. We find this case to be an afterthought. This witness has further stated that he was allowed to work as polling agent on behalf of the petitioner at the Ratan booth where also Mr. Ganguly presided,—a fact which falsifies the general allegation of the petitioner that all his polling agents were not allowed to work as such at the booths where Mr. Ganguly presided.

65. The petitioner (P.W. 26) admits that when he went to the booth at Chandpur Dahgana at about 1 P.M. he learnt that his polling agent had not been allowed to work as such. Still he did not file any written objection before the Presiding officer. He made no complaint regarding Mr. Ganguly's refusal to allow any of his polling agents to work as such, either to the Returning officer or to the Election Commissioner. The diaries of Mr. Ganguly on the record do not show that any polling agent of the petitioner was not allowed to work as such at any booth. The diaries (Exts. 5/h and 5/i) of Mr. Ganguly relating to the booth at Chandpur Dahgana does not make any mention of the alleged incident in regard to Nageswar Prasad Yadav. We find that the case of the petitioner regarding the disallowing of his polling agents by Mr. Ganguly from working as such at the different booths where he presided is much too discrepant to be relied upon. We further find that the specific case in regard to Nageswar Prasad Yadav as alleged in the election petition is also not true and, in any case, not substantiated by any reliable evidence.

66. Regarding the despatch of petitioner's boxes unsigned and unsealed by Mr. Ganguly wherever he was the Presiding Officer the case of the petitioner in the election petition is rather vague. It is not specifically stated by whom the boxes were not signed and sealed. The petitioner (P.W. 26) has alleged in his evidence that his ballot boxes of none of the booths where Mr. Ganguly presided were signed and sealed on his behalf. There is no such specific case in the election petition. He, also raised no such objection either at the time of polling or at the time of counting. R.W. 7 Shibakanta Misra has stated that at all the booths, at the end of the day's polling, the ballot boxes were duly sealed with the seal of the Presiding Officer and that he also used to put his seal on the ballot boxes of both the respondent and the petitioner and that similarly the petitioner's agents also used to put their seals on both the ballot boxes. This fact finds ample corroboration from the evidence of P.W. 11 Ramdeo Mahto who was himself a candidate for election for the State Assembly seat from the Gogri Constituency in which Mr. Ganguly acted as the Presiding Officer at several booths. He is definite that he was present at the time of the sealing of the ballot boxes at two booths, namely, Chandpur Dahgana and Usari. He has stated that on each ballot box the Presiding Officer used to put his seal at two places, one on the strings which were meant as a device for opening the slit and the other on the paper or cloth which used to be wrapped round the closed ballot boxes. At the commencement of the polling, he proceeds, a paper seal was inserted into the ballot box on which the candidates or their polling agents used to put their respective signatures. He is definite that he was present at Chandpur Dahgana booth on both the days of the polling, both at the time of the commencement and at the time of the closing of the polling. He admits that the Presiding Officer used to seal and sign the parliamentary ballot boxes as

well. He further admits that he had put his own seal not only on his own ballot box but also on the ballot boxes of the other candidates and that similarly the other candidates also used to put their seals on his ballot box, if they so liked. Of course, in regard to the ballot boxes of the petitioner, he has stated that they were not sealed either with the seal of the petitioner or of his polling agent at the said two booths, but he is definite that they were sealed with the seal of the Presiding Officer. The petitioner has not come forward with a specific case that so and so were present at the booth as his polling agents or that he himself was present at the time of the commencement or at the time of the closing of the polling at such and such booth and that in spite of their presence, the ballot boxes were not allowed to be sealed and signed either by himself or by his agents. In case neither he himself nor any of his polling agents were present at the time of the sealing of the ballot boxes, the Presiding Officer cannot be held responsible if the boxes were not sealed or signed by the petitioner or his agent.

67. Moreover, in this case we find that there is no reliable evidence to prove that the ballot boxes were really not sealed and signed by the petitioner or his agent at the booths where Mr. Ganguly presided. The petitioner himself has not stated that he was himself present at the time of the sealing of the ballot boxes, nor has he examined any of his polling agents to say that in spite of his presence he was not allowed to put his seal on the ballot boxes by Mr. Ganguly. We have already pointed out that the petitioner did not make any complaint about it when in the ordinary course of human conduct he should have made such complaint if any such thing did really happen. From the ordersheet of the Returning Officer (Ext. E) it appears that the petitioner took several objections before him, but he did not make any such allegation that the ballot boxes were despatched by Mr. Ganguly unsealed and unsigned. We find that this case of the petitioner also remains unestablished.

68. In this case, however, it is an admitted fact that the respondent's brother Shibakanta Misra was present at all the polling booths where Mr. Ganguly presided. His own evidence in examination-in-chief is that he worked as respondent's polling agent. In cross-examination, however, he stated that he acted as his relief polling agent for which he had got from him 5 or 6 authority letters. The respondent (R.W. 16) has made varying statements. From his evidence in paragraphs Nos. 26 and 32 it would appear that he was his polling agent at Chandpur Dahgana and at Usari, but in paragraph 33 he has stated that he was his emergency relief polling agent for which he had given him 10 to 12 letters of authority. No such letter of authority or its duplicate has been produced in this case. While the petitioner's witnesses were being examined, it was not suggested to any of these witnesses that Shibakanta Misra was a relief polling agent or an emergency polling agent. On the other hand, a definite suggestion as made to P.W. 18 is that he was his polling agent at Chandpur Dahgana.

69. The respondent has tendered in evidence the diary (Ext. A/3) of the Presiding Officer Shri P. C. Mitra of the date 12th January 1952 and relating to the polling station Maheshkhut U.P. School. Reliance is placed on the statements made in paragraph 12 of this diary which runs as follows:—

“Shri S. K. Misra agent of Misra Suresh Chandra came with an appointment letter which was for relief polling agent to attend on emergency at any of the polling stations within the subdivision of Khagaria and Ballia P.S. No such appointment letter was forwarded previously to me by the S.D.O., but as the appointment letter bears court seal of the S.D.O., Khagaria and his signature etc., I have to allow him inside the booth after keeping copy of the appointment letter and taking his declaration thereon

No such appointment letter or its copy has been produced. It is not the case of the respondent or of his brother Shibakanta Misra that he had got any such general appointment letter as alleged in the diary. Shri P. C. Mitra has not been examined. So we cannot accept the aforesaid statements in the diary as they are uncorroborated by any evidence, oral or documentary on the record. Moreover, we would add that the S.D.O., Khagaria was neither the Returning Officer nor the Assistant Returning Officer of the Parliamentary Constituency in question and so any appointment letter bearing the signature or seal of the S.D.O., Khagaria would be invalid and that Shibakanta Misra would be incompetent to act as relief polling agent on the authority of such an appointment letter.

70. In the diary (Ext. 5/f), dated 7th January 1952 relating to the polling station Gogri H.E. School and also in the diary (Ext. 5/h), dated 21st January 1952 relating to the polling station Chandpur Dahgana U.P. School, both of

Mr. N. C. Ganguly, Shibakanta Misra has been described as election agent of the respondent. This lends great support to the contention of the petitioner in the election petition that Shibakanta Misra represented himself before the Presiding Officer as election agent of the respondent although he was not. The petitioner (P.W. 26) has also pledged his oath and stated that Shibakanta Misra used to be present at the booths presided over by Mr. Ganguly and that he used to sit there representing himself to be the election agent of the respondent, but that he was neither his election agent nor polling agent. Although this case of the petitioner was clearly set forth in para. 2(o) of the election petition corresponding to para. 1(xv) of the 1st, the respondent in para. 23 of the written-statement, while denying that Shibakanta Misra as his election agent has not stated his exact status. There is no case in the written-statement that he was his relief polling agent or emergency relief polling agent. The respondent denies that Shibakanta Misra was his election agent, a fact which finds support from the nomination paper (Ext. 10). We would add that while there are provisions for appointment of polling agents and relief polling agents, there is no provision in law for appointment of an emergency relief polling agent. It is, therefore, not probable that the respondent could have appointed Shibakanta Misra as his emergency relief polling agent and as discussed above there is no reliable evidence to support this allegation. Here we may add that the petitioner by his petition dated 20th January 1955 called for all Form No. 6 filed by the respondent from the Returning Officer. A letter for the same was accordingly issued to the Returning Officer (District Magistrate, Monghyr) who along with his forwarding letter dated, 30th January 1955 sent all Form No. 6 of the respondent, numbering 102. Amongst these forms, there is admittedly none in the name of Shibakanta Misra (R.W. 7). We, therefore, accept the contention of the petitioner and find that Shibakanta Misra did sit and act at the several booths where Mr. Ganguly presided, falsely representing himself as election agent of the respondent.

71. In this case the respondent (R.W. 16) has alleged that of all the Presiding Officers Mr. Ganguly was most hostile towards him. Two instances have been given to illustrate the alleged hostile attitude of Mr. Ganguly. The first is that he did not allow R.W. 13 Dasrath Jha to work as his polling agent at Ratan and the second is that he did not agree to the placing of the ballot boxes in the manner as suggested by R.W. 7 Shibakanta Misra at Chandpur Dahana. The letter of authority said to have been granted to Dasrath Jha has not been produced. The diary of the booth at Ratan has not been tendered in evidence. In the absence of any document to show that Dasrath Jha was duly appointed polling agent of the respondent or that any such incident took place as alleged, we are not prepared to accept the verbal statements either of Dasrath Jha (R.W. 13) or of R.W. 3 P. C. Misra regarding the same. R.W. 7 Shibakanta Misra and the respondent (R.W. 16) were admittedly not present at the time of the alleged incident. The respondent has relied on the diary (Ext. A/1) of Mr. Ganguly of the date 17th January 1952 relating to polling station at Usari in which it is stated that a polling agent of Suresh Chandra Misra was not allowed to act as such for certain reasons as mentioned therein. No evidence has, however, been adduced to show that the polling agent of the respondent at the aforesaid booth was, in fact, not allowed to work as such by Mr. Ganguly. In the absence of any positive evidence to this effect we do not accept the aforesaid statement in the diary (Ext. A/1), especially when Mr. Ganguly has not been examined in support of the same.

72. Regarding the other incident, it does appear from the diary (Ext. 5/h) dated 21st January 1952 that there was some difference between Mr. Ganguly and Shibakanta Misra regarding the arrangement of the ballot boxes in the polling room. There are two telegrams (Exts. D and D/1) both dated 21st January 1952 sent by Shibakanta Misra, one to the Election Commissioner, Delhi and the other to the Election Commissioner, Patna making some such allegation against Mr. Ganguly. In these two telegrams the recitals of which are common it is alleged:—"Siding Congress. Placing boxes in Assembly Parliament differently to give prominence to Congress; passing bogus voters wilfully, not referring to assessor and chowkidar." Excepting the objection regarding the placing of boxes, no reliable evidence has been adduced in support of the other allegations. There is no doubt that in the telegrams exaggerated statements were made by Shibakanta Misra. Although there was some difference between Shibakanta Misra and Mr. Ganguly regarding the arrangement of the ballot boxes there is no reliable evidence to prove that Mr. Ganguly was "hostile" to the respondent.

73. On the other hand, there is stronger evidence of the close association of Mr. Ganguly with Shibakanta Misra. Shibakanta Misra (R.W. 7) has stated that

although he worked at all the booths presided over by Mr. Ganguly he presented his alleged letter of authority before him only once at the booth at Ratan. Apart from other evidence this also goes to show that Shibakanta Misra was thick and thin with Mr. Ganguly. From the evidence of P.W. 18, Ramdeo Mahto who was a candidate for a State Assembly seat during the last general election, it appears that although there were polling agents of the respondent at the booths at Usari and at Chandpur Dahgana, Shibakanta Misra also used to sit near the Presiding Officer, Mr. Ganguly at the said booths. This was wholly illegal. Under Rule 17, it is clearly laid down that the Presiding Officer shall exclude from the booth all other persons except those mentioned therein. Shibakanta Misra does not come under any of the categories of the persons mentioned in this rule. Mr. Ganguly has not been examined, and as such we have had no opportunity to know what he has to say under what circumstances he allowed Shibakanta Misra to work at the booths, but as the evidence stands, we have no doubt that the presence of Shibakanta Misra inside the booths was wholly unwarranted and illegal and that the conduct of Mr. Ganguly in tolerating his presence at all the booths where he presided is, indeed, very suspicious.

74. Now, the question arises whether the conduct of Shibakanta Misra in managing to sit and work as *de facto* election agent of the respondent at all the booths presided over by Mr. Ganguly through his active support or connivance, comes within the mischief of section 123, clause (8) of the Act. There is no doubt that Shibakanta, as an election agent had much extended rights and privileges than a mere polling agent, inasmuch as he was free to remain inside the booths or to go out at his pleasure and to contact the voters even during the time of the polling at all polling stations. All the same, in this case there is no specific allegation in the election petition that Shibakanta misused his position and presence at the booths and his association with Mr. Ganguly in exercising any undue influence on the voters in favour of the respondent or in interfering with the free exercise of the electoral rights in any manner and there is absolutely no evidence to show the exercise of any such undue influence or interference. Although the conduct of both Shibakanta and Mr. Ganguly is highly questionable, we think that, in the particular circumstances of the case, it would not be reasonable to infer that Shibakanta procured any assistance from Mr. Ganguly for the furtherance of the prospects of the respondent's election. We, therefore, hold that the case, as alleged, does not come under the purview of section 123, clause (8) of the Act.

75. In paragraph 7 of the election petition corresponding to para. i(xx) of the list the petitioner has also contended that the election of the respondent is liable to be set aside on the ground (a) that his election agent has not filed the return of election expenses and (b) that he has shown in his return of election expenses many items of unauthorised expenses. In this connection, it is alleged that the respondent made payment to one Umashanker Prasad of Maheshkhut for serving as a driver in the election. The respondent in para. 28 of his written-statement has submitted that he was his own election agent and as such the question of the filing of the election expenses return by his election agent does not arise. He has also denied that he has shown any unauthorised expenses in the return.

76. In this case it is definitely established that the respondent was himself his own election agent. It is also the admitted position that the return of election expenses (Ext. 8) filed by the respondent bears his own signature as candidate only, the column requiring the signature of the election agent being penned through and that he filed only one declaration (Ext. 7) in support of the return, signed by himself as candidate.

77. Sub-sections (1) and (2) of section 76 of the Act which relate to the return of election expenses are as follows:—

- “(1) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed by him and his election agent.
- (2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate.”

It is clear from these provisions that a return of the election expenses has to be signed by the candidate and also his election agent and that the return of election expenses has to be accompanied by declarations in the prescribed form, both by

the candidate and his election agent. In our opinion, in a case where the candidate is himself his election agent, it is altogether redundant for him to file two separate declarations, one as candidate and the other as election agent, for in each case the deponent is one and the same person. Similarly we are of opinion that it is also not necessary that the candidate should sign the return of his election expenses once as candidate and again as election agent, for the position does not at all improve by his signing the document in his two capacities. In case, however, it be considered necessary that even in such a case the candidate should sign the return as election agent also and that he should also file a separate declaration as election agent, in our view the non-compliance with these provisions is a mere irregularity and it does not, in any way, affect the result of the election, as held in the case of *Imrat Khan v. Ch. Mehtab Khan and others*, Indian Election Cases, Sen and Poddar, page 768, 1951 Edition.

78. The particular item of expenditure which is said to be unauthorised is an item of Rs. 36 shown as paid to one Umashanker of Maneshkhut for serving as driver in carrying agents to the booths by car and this item is entered in the return of election expenses (Ext. 8) Part C (*Bhag—Ga*). The expenditure is supported by voucher (Ext. 9/a) which shows that Umashanker was paid the said amount as his remuneration for serving as driver for the period from 1st January 1952 to 18th January 1952. The respondent (R.W. 16) has also stated that Umashanker was one of the two drivers whom he had engaged during the days of the election and that his appointment was on daily wages. The learned advocate appearing on behalf of the petitioner has relied on Rule 118 read with Schedule VI of the Representation of People Rules, 1951 and has urged that the payment to Umashanker is unauthorised, inasmuch as he is not one of the persons specified in Schedule VI whom the candidate may employ under Rule 118. We do not accept the contention for in our view, Umashanker was not an employee in connection with the election within the meaning of Rule 118. In our opinion, the payment to Umashanker was, in fact, payment towards travelling expenses of the agents of the respondent which is duly authorised, as is evident from Part C of Form 26 of the return of election expenses. It is specifically provided that "in this Part shall be shown all other expenditure (including travelling expenses and cost of refreshment provided) incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers." We, therefore, find that the payment of the aforesaid amount of Rs. 36 to Umashanker was not unauthorised.

79. The respondent (R.W. 16) in para. 53 of his deposition admits that on 15th January 1952 he gave a sum of Rs. 300 to Mahendra Narain Singh, Secretary of the Socialist party for the refreshment expenses of the workers in each of the polling booths in Gogri P.S. The learned lawyer for the petitioner relies on this admission and contends that this was also an unauthorised expenditure, within the meaning of section 123(7) of the Act on the basis of which the election of the respondent may be declared to be void. In this connection he has submitted that although the said item of expenditure is not specifically mentioned in the list, the Tribunal may take that expenditure into consideration and pass judgment on admission. On this point he has referred us to the case of *Shantilal Choudhry v. Raghuraj Singh and others*, 9 Election Law Reports 93 at page 99. In this case, no decision, in fact, was given on the alleged admission and there is only a general observation that a judgment may in proper cases be given by the Tribunal on admission. We do not dispute this proposition in the abstract or in the present case, we find that the said item of expenditure is not unauthorised. Agents in the election law are wide enough to include workers for whom refreshment expenses may be lawfully incurred and shown in Part C of Form 26 of the return of election expenses. We, therefore, find that in this case, no major corrupt practice was committed due to the incurring of any unauthorised expenditure within the meaning of section 123(7) of the Act. In view of the aforesaid findings, we answer both parts of issue No. 4 in the negative.

80. Issue No. 8.—We have already found that Mr. Ganguly acted in an illegal manner in allowing Shibakant Misra to sit at all the booths where he presided without any lawful authority and in contravention of the provisions of Rule 17, but there is nothing to show that the result of the election has been affected thereby in any manner. We accordingly answer the first part of issue No. 8 in the affirmative and the second part in the negative.

81. Issue No. 9.—In view of the findings on other issues as given above, this issue loses its importance. All the same we would record our finding on this as well. In para. 8 of the written statement the respondent alleged that he took all reasonable means for preventing the commission of corrupt and illegal practices at the election. In his evidence in examination-in-chief he proceeds further and

says that he had issued instructions to his workers orally and also in writing to keep the election free and to avoid all corrupt practices and that such instructions had also been issued by the Socialist party. From his statements in paras. 20 and 22 of his deposition it appears that he issued printed or carbon copies of such instructions to his workers, the original of which was duly maintained at his Khagaria office and he further admits that he must have at his place printed and carbon copies of such instructions. No such copy has been produced in this case and there is no mention in the written statement about the issue of such carbon and printed copies of instructions. We find that the respondent has failed to prove that he issued any such instruction or that he took all reasonable means for preventing the commission of corrupt or illegal practices at the election. Issue No. 9 is accordingly answered in the negative.

-82. *Issue No. 10.*—In view of our aforesaid findings, we hold that the petitioner is not entitled to any relief. The election petition is accordingly dismissed. In the particular circumstances of the case, we do not allow any costs to the respondent.

BHAGALPUR;

The 10th October 1955.

RAM JIVAN SINHA, *Chairman.*

10-10-1955.

UMAKANTA PRASAD SINHA, *Member.*

10-10-1955.

RAJESHWARI PRASAD, *Member.*

10-10-1955.

Dictated and corrected by me after transcription.

(Sd.) RAM JIVAN SINHA, *Chairman.*

10-10-1955.

[No. 19/190-52-Elec.III-18641]

By order,

P. S. SUBRAMANIAN,

Secretary to the Election Commission.